
**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Case Nos. 17-1238 & 18-1094

**(Agency Decision in 08–CA–11943 and 08–CA–119535
Reported at 365 No. 158)**

**MIDWEST TERMINALS OF TOLEDO INTERNATIONAL, INC.
Petitioner/Cross-Respondent**

vs.

**THE NATIONAL LABOR RELATIONS BOARD
Respondent/Cross-Petitioner**

**ON PETITION FOR REVIEW AND CROSS-APPLICATION
FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD**

SECOND SUPPLEMENTAL APPENDIX

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Second Supplemental Appendix was filed on this 29th day of August, 2018. Notice of this filing will be sent via the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Aaron T. Tulencik
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1 THE WITNESS: That's the only
2 reason I wanted to because he asked that
3 question and it's right here in the --

4 Q. So that's nine quarts -- I mean
5 twelve. No, six.

6 A. Three per wheel, so three times
7 four is twelve.

8 JUDGE BOGAS: Mr. Brown, really, is
9 getting into some of these details and adding
10 up how many gallons -- I really think you got
11 to move on.

12 MR. BROWN: I was already moved on,
13 he went back to it.

14 JUDGE BOGAS: I know, but getting
15 into the percentage and what percentage is how
16 many gallons, I can't imagine that that would
17 be relevant to anything in this case, so I'll
18 just ask you not to get lost in the weeds.

19 MR. BROWN: Yes.

20 Q. Back to the brake pressure
21 switch --

22 A. On the 4th of October I found the
23 brake pressure switch bad and I returned on the
24 15th. I had to order the part.

25 Q. And the brakes -- the brake

1 pressure switch, does that send a signal into
2 the cab to notify the operator of something
3 wrong?

4 A. I don't know if that switch would
5 notify you or not. I would have to look at a
6 schematic and see where the warning lights come
7 into play.

8 Q. But you did find that it was
9 broken, it was bad?

10 A. Yes, I have it on there on the 4th
11 that the brake pressure switch was bad and I
12 replaced it on the 15th when I went back.

13 Q. Is there a way where you have some
14 special machine that would tell you when that
15 brake pressure switch went bad?

16 A. No.

17 Q. It could have been days or even
18 weeks possibly?

19 A. Yes.

20 Q. Mr. Groweg, when you arrived at
21 Midwest Terminals and looked over the machine
22 and taking out the brake pressure switch that
23 had been damaged, you had some problems with
24 your -- you would say that there were some
25 problems that -- there were a few problems with

1 would he come to testify to this? This falls
2 under some sort of hearsay. I mean where is
3 this coming from specifically, his information
4 and expertise for this?

5 JUDGE BOGAS: I'm going to sustain
6 the objection as to what other people might
7 have -- what their noses might have been able
8 to smell. If you want to lay a foundation that
9 he has some experience in operating loaders
10 himself and he's had experience with these
11 things, he can testify about that.

12 Q. Mr. Leach, do you have experience
13 operating end loaders?

14 A. Yes, I do.

15 Q. And when have you operated end
16 loaders?

17 A. Well, I started at a young age, I
18 was actually in the sixth grade and I used to
19 operate a loader for Mike Grill Trucking
20 Company.

21 Q. Okay.

22 A. And then I was certified on loaders
23 through the Department of Transportation in the
24 early 90s, 91 or somewhere in there. Although
25 I had been driving loader for quite some time,

1 at least the Department of Transportation you
2 went to formal training that you had to go
3 through, that's one of their requisites.

4 So you go through a two-week
5 training down in Columbus and then you learn as
6 much as you can about the operation of a loader
7 and trucks.

8 Q. In your experience in operating an
9 end loader, what are some of the signs that the
10 brakes are getting hot?

11 A. Again, the easiest way to detect it
12 is the feel of the pedal, the brake pedal, you
13 can feel it starting to -- you have to push it
14 even harder. I mean it's like you could almost
15 go down to the floor when it starts really
16 getting hot, you can tell the brakes are
17 getting hot.

18 And then another indicator, as I
19 said again, whether I smelled it or whether I
20 didn't smell it, but I can tell you that I can
21 smell a loader sitting out in front of this
22 building if the brakes are hot. That's my
23 personal experience. I can tell at a great
24 distance because I know that odor, that smell.
25 It's just as an operator, you just get a sense